

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

XAVIER INGRAM,

Plaintiff,

vs.

**COUNTY OF CAMDEN, CAMDEN
COUNTY POLICE DEPARTMENT,
JEREMY MERCK, ANTONIO
GENNETTA, NICHOLAS
MARCHIAFAVA, JOHN SCOTT
THOMSON, ORLANDO CUEVAS, JOHN
DOE(S) 1-50, and
ABC ENTITIES 1-10.**

Defendants.

CIVIL ACTION NO. 1:14-CV-05519

**BRIEF ON BEHALF OF DEFENDANTS CAMDEN COUNTY, CAMDEN COUNTY
POLICE DEPARTMENT, JOHN SCOTT THOMSON, AND NICHOLAS
MARCHIAFAVA IN SUPPORT OF MOTION TO DISMISS ALL CLAIMS RELATING
TO POST-HANDCUFFING MOVEMENTS OF INGRAM BY DEFENDANT
MARCHIAFAVA PURSUANT TO FED. R. CIV. P. 50**

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County Police Department, John Scott Thomson,
and Nicholas Marchiafava*

INTRODUCTION

In this action, Plaintiff alleges that Defendant Officers acted unlawfully by moving Plaintiff after he was handcuffed. Plaintiff further alleges that this constituted a failure to provide medical aid and/or negligence.¹

Due to critical developments in this trial, and specifically the testimony of Plaintiff's medical causation expert, Dr. James Yue, Defendants respectfully seek dismissal of these claims at this time. Dr. Yue admitted at trial that he *cannot* say, within a reasonable degree of medical probability, that any such action of these actions caused injury. Based on this testimony, Plaintiff cannot meet his burden on these claims as a matter of law, and further, qualified immunity is warranted. Therefore, any claims relating to alleged failures or misconduct in: (1) lifting Ingram's arms during a search incident to arrest; (2) rolling Ingram over to sit him up; (3) sitting Ingram up; and (4) any subsequent movements of Ingram by the officers should be dismissed with prejudice.

ARGUMENT

I. THE LAW GOVERNING MOTIONS PURSUANT TO RULE 50 OF THE FEDERAL RULES OF CIVIL PROCEDURE

Under Rule 50 of the Federal Rules of Civil Procedure, a "motion for judgment as a matter of law may be made at any time before the case is submitted to the jury." Fed. R. Civ. P. 50(a)(2). The motion is proper if "a party has been fully heard on an issue during a jury trial and

¹ Plaintiff alleges the following counts: (1) excessive force in the course of Ingram's arrest in violation of 42 U.S.C. § 1983 ("Section 1983") (Count I); failure to provide adequate medical care (Count II); supervisory and bystander liability as to Merck (Count III); that the County of Camden is liable under a Monell theory for inadequate policies, procedures, and customs (Count IV); that the County of Camden is liable under a Monell theory for inadequate training and supervision (Count V); that Defendant Officers are liable for common law assault and battery (Count VI); that Defendant Officers are liable for common law negligence (Count VII); that the County of Camden, Chief Thomson, and Assistant Chief Cuevas are liable on a common law theory of negligent training and supervision (Count VIII); and that Defendant Officers are liable for false arrest and imprisonment (Count IX).

the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue[.]” Fed. R. Civ. P. 50(a)(1). The court may resolve the issue against the party and “grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue[.]” Fed. R. Civ. P. 50(a)(1)(B).

II. THE LAW OF CAUSATION IN SECTION 1983 CASES ALLEGING FAILURE TO PROVIDE MEDICAL AID

Failure to provide medical care to an arrestee or a post-arrest detainee can rise to the level of a constitutional violation under Section 1983 and subject the officer to direct liability “only if that failure rises to the level of deliberate indifference to that person's serious medical needs.”² Mantz v. Chain, 239 F. Supp. 2d 486, 504 (D.N.J. 2002); Hill v. Algor, 85 F. Supp. 2d 391, 409 (D.N.J. 2000); Groman v. Twp. of Manalapan, 47 F.3d 628, 637 (3d Cir. 1995). The deliberate indifference standard governs claims “arising out of one's arrest and post-arrest detention.” Mantz, 239 F. Supp. 2d at 504; Hill, 85 F. Supp. 2d at 409. To demonstrate deliberate indifference to serious medical needs, a plaintiff must show (i) a serious medical need, (ii) acts or omissions by law enforcement officers that indicate deliberate indifference to that need, and (iii) a causal connection between the indifference and the plaintiff's injury. Smith v. Gransden, 553 F. App'x 173, 177 (3d Cir. 2014).

As per the first prong, a medical need is serious if it is “one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily

² The “deliberate indifference” standard in “failure to provide medical care” claims for arrestees and post-arrest detainees under the Fourteenth Amendment is the same standard the Third Circuit, including this Court, has used in assessing “failure to provide medical care” claims for post-conviction inmates under the Eighth Amendment. See Reynolds v. Wagner, 128 F.3d 166, 174 (3d Cir. 1997); Snyder v. Baumecker, 708 F. Supp. 1451, 1460 (D.N.J. 1989); see also Taylor v. Plousis, 101 F. Supp. 2d 255, 261 (D.N.J. 2000) (“[C]ourts have applied the same standard to claims of ‘deliberate indifference’ asserted under the Due Process Clause as those under the Eighth Amendment.”).

recognize the necessity for a doctor's attention.” Monmouth Co. Correctional Institutional Inmates v. Lanzaro, 834 F.2d 326, 347 (3rd Cir. 1987); see also Hill, 85 F. Supp. 2d at 409–10 (recognizing that a gash to plaintiff’s head along with blood on his head, hands, and clothing “is the type of injury that a lay person easily would recognize as requiring medical treatment.”).

Moreover, deliberate indifference is a “subjective standard of liability consistent with recklessness as that term is defined in criminal law.” Gransden, 553 F. App'x at 177; Natale v. Camden Cty. Corr. Facility, 318 F.3d 575, 582 (3d Cir. 2003); see also Rouse v. Plantier, 182 F.3d 192, 197 (3d Cir. 1999) (“It is well-settled that claims of negligence [], without some more culpable state of mind, do not constitute ‘deliberate indifference.’”). Accordingly, holding a police officer liable for failure to provide medical care requires proof that the officer knows of and disregards an excessive risk to health or safety. Davis v. Twp. of Paulsboro, 421 F. Supp. 2d 835, 856-57 (D.N.J. 2006); Mantz, 239 F. Supp. 2d at 504; Gransden, 553 F. App'x at 177. The officer must be both “aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and... draw the inference.” Natale, 318 F.3d at 582 (quoting Farmer v. Brennan, 511 U.S. 825, 837 (1994)).

If an officer offers to provide the person in custody with medical care and that person refuses, the officer is not deliberately indifferent to the person’s medical needs. See Groman, 47 F.3d at 637; Mantz, 239 F. Supp. 2d at 504. Similarly, if an officer lacked the requisite knowledge or training to provide effective aid to the person in custody, a prompt call for an ambulance and efforts to clear a path for its arrival have been shown to demonstrate a timely response to the person’s medical need. Gransden, 553 F. App'x at 177–78. Also, if the person in custody did not show clear signs of requiring serious medical attention, the officer is not deliberately indifferent to the person’s medical needs. See Walmsley v. City of Philadelphia,

872 F.2d 546, 552 (3d Cir. 1989); Miller v. City of Philadelphia, 174 F.3d 368, 375 (3d Cir. 1999) (recognizing that “a much higher fault standard is proper when [an officer] [] is acting instantaneously and making pressured decisions without the ability to fully consider their risks. In such circumstances, liability will only be applied when a ‘purpose to cause harm’ is demonstrated.”); Giles v. Kearney, 571 F.3d 318, 330 (3d Cir. 2009) (noting that the key inquiry is whether the officer “responded reasonably to the risk.”).

The final prong requires that there be a causal connection between officer’s deliberate indifference and the plaintiff’s injury. Gransden, 553 F. App’x at 177; Natale, 318 F.3d at 582. Thus, where a plaintiff presents no evidence that any injury he suffered was the result of the alleged delay or denial of medical care, as opposed to the alleged excessive force, his claim for failure to provide medical care will fail. See Mantz, 239 F. Supp. 2d at 504 (granting defendant’s motion for summary judgment where plaintiff failed to provide any medical evidence that the officer’s “alleged delay in responding to his demands for an ambulance caused him to suffer harm which he would not have suffered had an ambulance been immediately called to the scene.”).

III. THE COURT SHOULD DISMISS ANY CLAIMS ALLEGING A FAILURE TO RECOGNIZE SIGNS OF PARALYSIS OR RELATING TO THE ACTIONS OF THE OFFICERS IN PLACING INGRAM IN A SEATED POSITION

On March 2, 2022, Plaintiff presented Dr. James Yue, M.D. to testify to his opinions and conclusions as to medical causation. During cross-examination, Dr. Yue admitted that he could *not* opine, to a reasonable degree of medical probability, that any manipulations after the alleged knee and alleged boot to Ingram’s neck caused any additional injury. Specifically, Dr. Yue testified as follows:

Q. Now, you have come to an opinion in this case that a knee in the neck and a boot in the neck caused this injury, correct?

A. Correct.

Q. All right. Would you agree with me that you -- as you sit here today, you can't state with reasonable medical certainty that the manipulations afterwards caused any additional injury?

A. I can't say a hundred percent, but I can say that when you do move an unstable spine, it does cause damage, further damage.

Q. I understand that it can. Can you sit here and say that within reasonable medical probability or certainty in this case that it did?

A. No. He was already completely quadriplegic, so it's hard to make someone more quadriplegic, but --

Q. Well, can you answer my question? Can you testify in this particular case within reasonable medical certainty that the manipulation caused any additional injury?

MS. BALDINGER: Objection, Your Honor. Certainty versus probability.

MR. BLUMBERG: I'll change it.

MS. BALDINGER: Use the appropriate standard.

THE COURT: Sustained. He's changing it. Go ahead.

BY MR. BLUMBERG:

Q. Would you agree with me that you can't state within reasonable medical probability in this case that the manipulations afterwards caused additional injury, correct?

A. *I can't say yes or no.*

Trial Transcript, at 451-25 to 453-1 (emphasis added).

Later, on re-direct examination, Dr. Yue was asked follow-up questions by Plaintiff's counsel as to why he could not say, "yes or no", whether the manipulations after the alleged knee and alleged boot in the neck caused additional injury. Dr. Yue stated:

Q. You were asked on cross-examination a question that stated -- and I believe I have it right -- could you tell whether the movement back and forth, after Mr. Ingram was set up, made his injuries worse?

Do you remember that question?

A. Yes.

MR. BLUMBERG: Objection, Judge. That was not the question.

THE COURT: Sustained.

Rephrase your question.

BY MS. BALDINGER:

Q. Do you remember being asked questions by Mr. Blumberg regarding Mr. Ingram's being moved back and forth?

A. Yes.

Q. And remember you said you couldn't answer that question "Yes" or "No"?

A. Correct.

Q. Could you tell us why you couldn't answer the question "Yes" or "No."

A. Because that would have needed a live MRI during the motion to see if there was actual, you know, tissue damage within the spinal cord itself. And obviously, we're not -- there's no live MRI that's on this North 7th Street that the patient -- that the plaintiff is in. And so you, sort of, need that information, because he's asking me about damage to the tissue.

Q. Do you have an opinion, within a reasonable degree of medical probability, as to what impact the moving him back and forth and having him fall on his face had on his injuries?

MR. BLUMBERG: Objection.

THE COURT: You don't have to answer. There's an objection.

State your grounds.

MR. BLUMBERG: It's been asked, and it's -- during cross-examination. There was no answer to that question, and I don't think he can change his answer.

THE COURT: Well --

MS. BALDINGER: It's not --

THE COURT: Excuse me.

Your response?

MS. BALDINGER: It's not. It's a clarification because it was misleading the way the question was asked.

MR. BLUMBERG: Objection, Judge.

THE COURT: Very well. But you know that on redirect, the witness can explain and clarify what was raised on cross.

So overruled. I'll permit it.

BY MS. BALDINGER:

Q. Can you answer the question, Dr. Yue.

What is your opinion as to the impact -- the motion of sitting Mr. Ingram up, having him move back and forth, fall on his face, and pick him back up -- have on his neck injury as sustained originally on the ground?

A. Correct. So any movement of an unstable spine will create further alteration in the physiology of the spinal cord and all the surrounding tissues. It will decrease the likelihood of recovery. The more you contuse the spinal cord, the more you stretch it, the more you rotate it, the less likely that you're going to get a recovery. So that's an additional traumatic event, and that can take -- could I see it acutely? Yes. But I may not see it acutely. I may see it a day or so later or a week later. The effects take time. And so -- but it's the motion, the additional motion, the additional contusion, bruising of the tissue that leads to the decrease in possible, potential recovery and gainful use of his extremities.

Trial Transcript, at 487:7 to 489:20 (emphasis added).

Given that Dr. Yue is Plaintiff's medical expert in this case, and since Dr. Yue candidly admitted that he cannot say "yes or no" as whether any manipulations of Ingram after the alleged knee and alleged boot in the neck caused injury, Plaintiff's claims relating to these movements by the officers should be dismissed. Plaintiff fails to establish even a *prima facie* case as to any

causal connection between any alleged deliberate indifference to a medical need and actual injury. Dismissal is warranted as to this allegation, and any related claims, as a matter of law.

Dismissal of such claims is further warranted based on Dr. Yue's statement that, in order for him – an orthopedic surgeon who has treated hundreds of patients and teaches medical students - to determine whether any manipulations caused injury, he “*would have needed a live MRI during the motion to see if there was actual, you know, tissue damage within the spinal cord itself*”. As Yue further states, *obviously, we're not -- there's no live MRI that's on this North 7th Street that the patient -- that the plaintiff is in. And so you, sort of, need that information, because he's asking me about damage to the tissue*”. Yue then follows that “any movement of an unstable spine will create further alteration in the physiology of the spinal cord and all the surrounding tissues”. This is too generalized and unspecific to the actions of the individual officers, especially given his earlier admissions. The statement is wholly without foundation given his admission that he would need an MRI in the street to determine whether those actions caused damage.

Dismissal is also warranted because, where a plaintiff presents no evidence that any injury he suffered was the result of the alleged delay or denial of medical care, as opposed to the alleged excessive force, his claim for failure to provide medical care will fail. See Mantz, 239 F. Supp. 2d at 504 (granting defendant's motion for summary judgment where plaintiff failed to provide any medical evidence that the officer's “alleged delay in responding to his demands for an ambulance caused him to suffer harm which he would not have suffered had an ambulance been immediately called to the scene.”).

Dismissal is warranted because Dr. Yue is unable to tie any specific post-handcuffing movements of Officer Marchiafava to any specific damages of Plaintiff. It is clear that “officers

must be personally involved in a constitutional rights violation to be held liable for it.” Lozano v. New Jersey, 9 F.4th 239, 242 (3d Cir. 2021) (citing Jutrowski v. Township of Riverdale, 904 F.3d 280, 284–85 (3d Cir. 2018)). In Jutrowski, plaintiff alleged excessive force as to multiple officers, claiming that one of the officers kicked him. However, plaintiff stated that he was unable to identify the specific officer who kicked him because plaintiff was face was pinned to the pavement when the alleged excessive force occurred. Jutrowski, 904 F.3d at 284. The Third Circuit concluded that summary judgment was warranted on the excessive force claim because, while Plaintiff was able to identify the universe of officers at the scene, he could not identify which officer kicked him.

The authorities on which we rely—tort law principles informing § 1983 liability, our own precedent, and the wisdom of our Sister Circuits—are thus unanimous that, in the face of motion for summary judgment, a § 1983 plaintiff must produce evidence supporting each individual defendant's personal involvement in the alleged violation to bring that defendant to trial. But Jutrowski has not done so: As he concedes, after significant discovery, he has narrowed the potential universe of actors to those that were in his immediate vicinity, but he filed suit against only four of the five of them and still cannot “identify the actor that kicked him.” Appellant's Br. 12. Put another way, he admittedly seeks to proceed to trial against at least three defendants who are “free of liability,” [Howell v. Cataldi, 464 F.2d 272, 283 (3d Cir. 1972)], without any “ascertainment of [which] individual charged was the perpetrator of the constitutional deprivation,” *id.* at 282. As the foregoing discussion teaches, that is not a sufficient basis to survive summary judgment.

Jutrowski, 904 F.3d at 291–92.

Here, Plaintiff fails to tie any specific post-handcuffing actions of Marchiafava to any actual damages sustained by Plaintiff as a matter of law. Dr. Yue did not identify any actions of Marchiafava which caused any movement of Ingram's unstable spine. Yue admitted that he could not testify to a reasonable degree of medical probability that *any* post-handcuffing movements caused injury. Even his specious attempt on re-direct to change his testimony does not save Plaintiff, as Dr. Yue does not identify any actions of Marchiafava which caused injury.

At best, the most Plaintiff has been able to show is that in some hypothetical situation that there might be a decrease in the ultimate recovery. However, when asked specifically about this case, Dr. Yue could *not* opine within reasonable medical probability that it caused further damage. He further did not render any opinion in this case to a reasonable medical probability that it actually had any effect on the “recovery.” Possibility is not enough.

For all of these reasons, Plaintiff fails to meet his burden that any post-handcuffing movements of Ingram led to injury. As such, any claims relating to these post-handcuffing movements should be dismissed with prejudice.

IV. QUALIFIED IMMUNITY SHOULD BE GRANTED AS A MATTER OF LAW AS TO CLAIMS RELATING TO MOVEMENTS OF INGRAM AFTER THE ALLEGED KNEE AND ALLEGED BOOT IN THE NECK

Dr. Yue’s testimony compels dismissal on the basis of qualified immunity. In assessing qualified immunity, the issue is whether ‘it would [have been] clear to a reasonable officer that his conduct was unlawful in the situation he confronted.’” Lamont v. New Jersey, 637 F.3d 177, 182 (3d Cir. 2011) (quoting Saucier v. Katz, 533 U.S. 194, 201–02 (2001); citing Anderson v. Creighton, 483 U.S. 635, 640 (1987)). “The qualified immunity standard ‘gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law.’” Gilles v. Davis, 427 F.3d 197, 203 (3d Cir.2005) (quoting Hunter v. Bryant, 502 U.S. 224, 229 (1991)); Kelly v. Borough of Carlisle, 622 F.3d 248, 254 (3d Cir. 2010).

Here, if Plaintiff’s medical expert would need an MRI on North 7th Street to determine if movements of Mr. Ingram are causing damage to the spinal cord, it cannot be said that the officers were objectively unreasonable in moving Ingram, as they did not know that these movements might cause damage. None of their actions can be considered as so plainly incompetent that no reasonable police officer would have done the same. See, e.g. Rodriguez v.

Panarello, 119 F. Supp. 3d 331, 339 (E.D. Pa. 2015) (no excessive force where plaintiff was paralyzed after falling off of the roof of a car from officer's use of a Taser; officers' actions were appropriate based on information known at the time); Pena v. Bexar Cty., Texas, 726 F. Supp. 2d 675, 692 (W.D. Tex. 2010) (no excessive force where officers moved suspect without knowledge that suspect was paralyzed).

CONCLUSION

For these reasons, any claims relating to alleged failures or misconduct in: (1) lifting Ingram's arms during a search incident to arrest; (2) rolling Ingram over to sit him up; (3) sitting Ingram up; and (4) any subsequent movements of Ingram by the officers should be dismissed with prejudice.

Respectfully submitted,

BROWN & CONNERY LLP

By: /s/ William F. Cook
William F. Cook

DATED: March 3, 2022

EXHIBIT D-1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

XAVIER INGRAM,

CIVIL ACTION NUMBER:

Plaintiff,

14-CV-5519-JRS

v.

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PAGES 331-559

COUNTY OF CAMDEN, CAMDEN
COUNTY POLICE DEPARTMENT,
ET AL,

Defendants.

Mitchell H. Cohen Building & U.S. Courthouse
 4th & Cooper Streets
 Camden, New Jersey 08101
 Wednesday, March 2, 2022
 Commencing at 9:00 a.m.

B E F O R E:

THE HONORABLE CHIEF JUAN R. SÁNCHEZ,
CHIEF UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

MAZIE SLATER KATZ & FREEMAN LLC
 BY: BETH G. BALDINGER, ESQUIRE
 CORY ROTHBORT, ESQUIRE
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Proceedings recorded by mechanical stenography; transcript
 produced by computer-aided transcription.

1 in the neck and a boot in the neck caused this injury, correct?

2 A. Correct.

3 Q. All right. Would you agree with me that you -- as you sit
4 here today, you can't state with reasonable medical certainty
5 that the manipulations afterwards caused any additional injury?

6 A. I can't say a hundred percent, but I can say that when you
7 do move an unstable spine, it does cause damage, further
8 damage.

9 Q. I understand that it can. Can you sit here and say that
10 within reasonable medical probability or certainty in this case
11 that it did?

12 A. No. He was already completely quadriplegic, so it's hard
13 to make someone more quadriplegic, but --

14 Q. Well, can you answer my question? Can you testify in this
15 particular case within reasonable medical certainty that the
16 manipulation caused any additional injury?

17 MS. BALDINGER: Objection, Your Honor. Certainty
18 versus probability.

19 MR. BLUMBERG: I'll change it.

20 MS. BALDINGER: Use the appropriate standard.

21 THE COURT: Sustained. He's changing it. Go ahead.

22 BY MR. BLUMBERG:

23 Q. Would you agree with me that you can't state within
24 reasonable medical probability in this case that the
25 manipulations afterwards caused additional injury, correct?

1 A. I can't say yes or no.

2 Q. Okay. Now, in coming to the opinion that the fall did not
3 cause the injury, you had to have an understanding of the fall,
4 correct?

5 A. Correct.

6 Q. All right. And in your opinion, based on everything
7 you've reviewed, including the Eye in the Sky video, it is your
8 opinion that Mr. Ingram fell to his hands and knees, correct?

9 A. My opinion is that as he ran from behind the parking lot
10 with the sandy shoes, he loses traction, officers catch up with
11 him, he tries to stop. And basically --

12 Q. I didn't ask you to demonstrate. I just asked you to
13 answer my question.

14 A. I'm trying to, if you --

15 Q. Can you answer my question --

16 A. I can't answer without telling you what I think.

17 Q. Well, did you think -- I took your --

18 A. I'm trying to tell you what I think, but you're not
19 allowing me to.

20 MS. BALDINGER: Your Honor --

21 THE COURT: Excuse me. Just ask questions. Listen to
22 the question and try to answer the question as best as you can.
23 There will be redirect, and then you could show the jury again.

24 THE WITNESS: So, again, he's running --

25 THE COURT: Wait a minute. There's no question.

1 THE WITNESS: Oh, I am sorry. I thought he asked me a
2 question.

3 THE COURT: Repeat your question.

4 MR. BLUMBERG: Right.

5 BY MR. BLUMBERG:

6 Q. Is it your opinion based on everything you've reviewed
7 that Mr. Ingram fell to his hands, his hands and knees hit the
8 ground first, and the fall ended with him on his stomach?

9 A. Yes.

10 Q. Okay.

11 MR. BLUMBERG: Can we play -- do you have the video of
12 the fall available?

13 BY MR. BLUMBERG:

14 Q. Now, you reviewed the Eye in the Sky video as part of your
15 review in this case?

16 A. Multiple times.

17 (Video playing.)

18 BY MR. BLUMBERG:

19 Q. You see him running?

20 A. Absolutely.

21 Q. And it's your opinion, after reviewing that video -- well,
22 let me ask you this. This video shows him running from the
23 left side of the screen to the right side of the screen,
24 correct?

25 A. Absolutely.

1 Q. Okay. And this video also shows that when after he falls,
2 that his feet are on the right side of the screen and his head
3 is on the left side of the screen.

4 A. Correct.

5 Q. Okay. And is it your testimony that this video shows him
6 on his stomach?

7 A. It shows him, yes -- it shows him with his feet to the
8 right lying down on his stomach.

9 Q. Okay. Feet to the right, head to the left, and he's lying
10 on his stomach.

11 A. Correct.

12 Q. You could tell all that from that video?

13 A. Yes.

14 Q. Okay. Now, you reviewed testimony in this case as well of
15 Officers Gennetta and Marchiafava?

16 A. Yes.

17 Q. And you would agree with me that they have both testified
18 under oath that, in fact, Mr. Ingram landed with his feet to
19 the right, his head to the left on his back? Are you familiar
20 with that testimony?

21 A. Yes.

22 Q. Okay. Your belief is after his hands and his knees hit
23 the ground, the rest of his body hit the ground at the same
24 time, correct?

25 A. Correct, kind of like a Tom Brady slide fall.

1 Q. I want to make sure I have the language correct. His
2 knees or hands or some other part where he's going to be trying
3 to stop his fall. Correct? That's what hit the ground next?

4 A. Yes, after his feet slide forward, he's rolling to the
5 left. He lands on his left side of his body.

6 Q. So he was twisting?

7 A. He was turning as he fell. He wasn't twisting himself.

8 Q. You wouldn't agree with a twist?

9 A. Well, you said he was twisted. He wasn't --

10 Q. No, I said twisting.

11 A. Turning, yes. Twisting, yes.

12 Q. He was twisting his body?

13 A. Correct.

14 Q. Twisting his neck?

15 A. Potentially.

16 Q. You would agree that this type of injury is a flexion
17 injury?

18 A. There's a component of flexion, but it's more rotational.

19 Q. Okay. But it does include flexion, correct?

20 A. Yes.

21 Q. And would you agree that a boot on the back of a neck
22 would cause extension?

23 A. Depends on the position of the head. If his face is down,
24 yes. If his face is turned, no.

25 Q. That gets us a little bit -- you said that in your opinion

1 the head was turned to the right, based on the deposition of
2 the plaintiff?

3 A. And attorney -- I am sorry, Officer Merck. Sorry.

4 Q. Well, let's start with the deposition of the plaintiff.
5 Is it your testimony that somewhere in that deposition or
6 depositions he testified that his head was turned to the right?

7 A. That's my belief, yes.

8 Q. Okay. You also indicated that Sergeant Merck testified
9 that his head was turned to the right, correct?

10 A. Yes.

11 Q. Is there any other evidence other than the testimony of
12 the plaintiff, you say, and the testimony of Sergeant Merck
13 that says his head was turned to the right? Anything else that
14 leads you to conclude that his head was turned to the right?

15 A. No.

16 Q. So if I represent to you that neither one of them
17 testified that his head was turned to the right, would that
18 change your opinion?

19 A. It could.

20 Q. Now, you talked about the fact that there was a full
21 thickness muscle injury, correct?

22 A. Yes.

23 Q. And that you'd agree that with a -- either an
24 unilateral -- I think you've said this -- or a bilateral
25 facet -- maybe you haven't. Let me back up. With a unilateral

1 or bilateral facet dislocation, do you see muscle injury?

2 A. Normally, no.

3 Q. Okay. When you said normally don't, would you agree with
4 me that it's not unheard of?

5 A. To this degree, I've never seen it in 30 years of
6 practice.

7 Q. Fair enough. But would you agree that it's
8 not -- forgetting the degree, that there can be muscle injury
9 as a result of a facet dislocation?

10 A. There can be some.

11 Q. So that your opinion in this case is that the extent of
12 the muscle injury is unusual?

13 A. Exactly.

14 Q. Okay. Now, you reviewed the MRIs in this case, right? I
15 think you took us through the MRIs and showed us the muscle
16 injury, right?

17 A. Correct.

18 Q. And you said white is bad, black is good.

19 A. Dark.

20 Q. Dark is good.

21 A. Yeah.

22 Q. And would you agree with me that based on the MRI, that
23 the subcutaneous tissue between the muscle and the skin on the
24 back of the neck was dark?

25 A. There is no -- under the skin there's no edema. In the

1 superficial layers, there's nothing.

2 Q. Okay. So would you agree with me that the MRI did not
3 demonstrate any type of injury to the subcutaneous tissue
4 between the muscle and the skin?

5 A. There is some superficial muscle edema but -- between the
6 skin and the fat, I don't see anything.

7 Q. So someone -- if someone were to testify that there was no
8 injury to the subcutaneous tissue above the muscle, that would
9 be accurate, correct?

10 A. Yes.

11 Q. Okay. Would you agree -- well, let me strike that. Now,
12 you reviewed the EMS records, the ambulance report?

13 A. Yes.

14 Q. All right. And the ambulance report, the people, the
15 paramedics write reports as to what their observations are with
16 respect to the individuals who they're getting?

17 A. Correct.

18 Q. All right. And would you agree with me that, in that
19 ambulance run record, there is nowhere in that record, any
20 documentation of a contusion or an abrasion or a bruising of
21 the neck?

22 A. Agree.

23 Q. All right. You also reviewed the records of Cooper
24 Hospital. After the EMS dropped him off at Cooper Hospital, he
25 goes to the emergency room, and then he gets treated in the

1 trauma unit or wherever he gets treated at Cooper, correct?

2 A. Yes.

3 Q. All right. And would you agree with me that nowhere in
4 those Cooper records is there any documentation of a contusion,
5 abrasion, or bruising to the neck?

6 A. A hundred percent agree.

7 Q. And would you agree with me that there is no mention in
8 the Cooper records of any type of contusion, abrasion, or
9 bruising to the back?

10 A. Agree.

11 Q. All right. Would you agree that you have never treated a
12 patient who was laying down where human pressure caused a facet
13 dislocation, either unilateral or bilateral?

14 A. Correct.

15 Q. All right. And would you agree with me that the video,
16 the Eye in the Sky video, does not allow one to conclude that a
17 boot or a knee was placed on the back of plaintiff's neck?

18 A. Agree.

19 Q. Now, you had talked to this jury and you put together some
20 type of presentation talking about the absence of a teardrop
21 fracture.

22 Do you recall that?

23 A. Correct, yes.

24 Q. I've reviewed your report. Do you have your report?

25 A. Yes.

1 Q. Do you mention anywhere in your report anything about a
2 teardrop or the absence of a teardrop fracture?

3 A. I talk about fractures in general that occur with flexion
4 distraction injuries. I don't specifically use the term
5 "teardrop," but I mention fractures.

6 Q. Okay. And you -- and with respect to fractures, did you
7 indicate that -- in this report, that the absence of a
8 particular fracture supported your opinions?

9 A. No.

10 Q. Okay. You talked about the fractures that did occur,
11 correct?

12 A. Correct.

13 Q. So I go back to did you ever mention anything about the
14 teardrop fracture or the absence of it in your initial report?

15 A. No.

16 Q. And then in the second report that you generated, after
17 the reports of the defense were sent to you, did you mention
18 anything about the absence of a teardrop fracture in this
19 second report?

20 A. Not specifically.

21 Q. Well, did you do it even generally?

22 A. Yes.

23 Q. Okay. And how did you do that?

24 A. In where I state there's usual patterns of fracture that
25 are seen in flexion distraction injuries. I don't go into

1 specifics, but there are certain elements of a flexion
2 distraction injury that are evident.

3 Q. Do you have your report in front of you?

4 A. Yeah.

5 Q. This is the January -- I'm looking at the January 17
6 report. And what I'm going to ask you to do is tell me where
7 in that report you generally refer to the absence of the
8 teardrop fracture.

9 A. I think I'm missing my second report.

10 Oh, wait, I got it. I found it. I found it.

11 So the predominant mechanism of injury --

12 Q. You don't -- don't -- anything you read, she has to take
13 down. So unless you're answering my question --

14 A. Yeah, I am.

15 Q. Okay.

16 A. Well, you told me to read what I --

17 Q. No. I just didn't want you to start reading your whole
18 report because --

19 A. No, I'm not. I'm on the third paragraph.

20 Q. Okay.

21 A. So I talk about predominant mechanism of injury of
22 unilateral facet dislocation --

23 Q. Wait. You have to slow way down for the court reporter.

24 A. Okay. So I say, "Assuming the plaintiff sustained a
25 post" --

1 Q. Tell me where you are. I am sorry.

2 A. Oh, yeah. Last page, last paragraph.

3 Q. Okay.

4 A. "Assuming the plaintiff sustained a post fall fracture
5 dislocation." And so within that fracture dislocation are many
6 things. There is ligament injuries, disc injuries, a
7 whole -- I didn't list every single thing because it's
8 impossible, but I mention the fracture dislocation injury as a
9 potential possibility, and within that falls teardrop
10 fractures, disc herniations, disc locations, spinal cord
11 injuries. I mean, the list goes on and on so...

12 Q. In fairness, Doctor, isn't that third paragraph talking
13 about your opinions as it relates to further injury from moving
14 him?

15 A. Anything. It could be --

16 Q. No. Isn't -- answer my question.

17 Isn't that third paragraph about your opinions about the
18 movement of Mr. Ingram?

19 A. Yes, assuming there's a fracture dislocation, which there
20 were. There was.

21 Q. Now, you showed us an article about a study with respect
22 to falls and -- those studies and the effect of those falls on
23 the cervical spine.

24 Do you remember that?

25 A. Correct.

1 Q. All right. And I think you indicated that that -- was
2 that article supplied by the defense or by you?

3 A. Which exhibit?

4 Q. It's 1089.

5 A. That's -- you supplied that.

6 Q. Okay. Would you agree with me that that article does not
7 indicate that a fall from a standing height is impossible to
8 have a facet dislocation?

9 MS. BALDINGER: Objection, Your Honor. "Impossible."

10 THE COURT: Rephrase. Rephrase.

11 Objection sustained. Rephrase.

12 BY MR. BLUMBERG:

13 Q. Well, would you agree with me that that article does not
14 stand for the proposition that a fall from a standing height
15 cannot cause an injury?

16 A. There was no injuries on there that was from a standing
17 falling height, so I would assume that there was none that were
18 there.

19 Q. Well, did they study any from a standing --

20 A. They studied all quadriplegic fracture dislocations that
21 came into that facility over a period of 15 years.

22 Q. Okay.

23 A. And none of them were from a standing height.

24 Q. Okay. So my question goes back to, did they ever indicate
25 that a fall -- does that article indicate that a fall from a

1 standing height cannot cause an injury?

2 A. I don't think they say it cannot, but it just wasn't ever
3 seen.

4 Q. Okay. Now, you have indicated that it is unlikely that
5 the injury in this case was caused by a flexion distraction
6 type of movement, correct?

7 A. Right.

8 Q. Would you agree with me it's possible?

9 A. No.

10 Q. So it's your testimony that it's impossible.

11 MS. BALDINGER: Objection, Your Honor, "possible" and
12 "impossible." It's "probable" or "improbable."

13 THE COURT: The objection is sustained.

14 He answered your question. You may move on.

15 BY MR. BLUMBERG:

16 Q. Now, in terms of the animations we saw, you had a part in
17 putting together those animations?

18 A. Correct.

19 Q. And you indicated that you gave that information to
20 the -- I think you said the plaintiff's team?

21 A. Correct.

22 Q. Are you a member of the plaintiff's team?

23 A. I guess I am. I don't know if that's an official
24 category, but...

25 Q. You then indicated that the injury to C4-5, you talked

1 about the C4-5 keeps you alive?

2 A. Keeps the diaphragm alive.

3 Q. Keeps the diaphragm alive.

4 Would you agree with me that no one was breathing for
5 Mr. Ingram?

6 A. Correct, until he got to the -- Cooper, where they had to
7 put him in a tube because he stopped breathing.

8 Q. I'm talking about the scene.

9 A. Correct.

10 Q. At the scene, no one was breathing for him, correct?

11 A. Correct.

12 Q. All right. Now, you talk about the amount of force needed
13 to dislocate a facet. I think you said, what is it, 6 -- did
14 you say 6? I don't remember.

15 A. 10 newton meters.

16 Q. 10 newton meters?

17 And can you tell the jury, what is 1 newton meter? Give
18 us an example of 1 newton meter.

19 A. Yeah. So 1 newton meter would be equivalent to -- so I
20 have -- if you're going do 1 newton meter, you have one -- you
21 know, the force would be approximately equal to a door, a heavy
22 door, opening a heavy door.

23 Q. Okay. Would you agree with me that a facet dislocation
24 can occur from someone twisting their neck without pressure?

25 A. I need more specifics.

1 Q. Okay. Now, if Mr. Ingram did, in fact, have his head to
2 the right, as you've opined, would you agree with me that the
3 maximum torque would be 90 degrees?

4 A. Less than -- no, less than that.

5 Q. Less than that?

6 A. You mean -- physiologic movement, you mean, or like how
7 far I could -- that someone else could turn his neck?

8 Q. Well, I mean, if his head is on the ground -- let's assume
9 his head is on the ground and his shoulders --

10 A. Uh-huh.

11 Q. -- and he's laying prone on the ground.

12 A. Yep.

13 Q. Is your neck in 90 degrees?

14 A. Not quite.

15 Q. Okay.

16 A. It's not -- you're not at -- actually, it's about
17 50 degrees. The normal range of motion is 50 to 60 degrees in
18 rotation. Beyond that, it's beyond physiologic.

19 Q. Okay. So 50 to 60 degrees is when you're basically laying
20 on the ground with your head turned to one side.

21 A. That's right.

22 Q. Okay.

23 MR. BLUMBERG: Your Honor, I'd like an opportunity to
24 look at my notes. I'm just about done but --

25 THE COURT: You may. You may.

1 (Brief pause.)

2 BY MR. BLUMBERG:

3 Q. Last two questions, Doctor.

4 Would you agree with me that there is no documentation in
5 any of the records that you reviewed of a boot mark on
6 Mr. Ingram's neck?

7 A. Correct.

8 Q. And finally, Mr. Ingram says that he complained of a crack
9 at the time that a boot was placed on the back of his neck.

10 Do you recall that testimony?

11 A. Yes.

12 Q. Would you agree with me that you've never heard a patient
13 complain of a crack during a facet dislocation?

14 A. I hear patients complain of cracks in their neck all the
15 time. I can turn my neck. I can crack my neck. It's very
16 easy to crack your neck. But, yes. I mean, if I have a
17 recording of someone during a quadriplegic event? I've never
18 had a recording of someone undergoing a quadriplegic event, no.

19 Q. When you've treated patients for facet dislocations, have
20 any patients complained of hearing a crack?

21 And your answer at the time of the deposition under oath
22 was, no. Correct?

23 A. Correct.

24 MR. BLUMBERG: All right. That's all I have.

25 MS. BALDINGER: Dr. Yue --

1 THE COURT: Hold on. Any questions?

2 MR. TAMBUSI: No, Your Honor.

3 THE COURT: Mr. Wittman?

4 MR. WITTMAN: No, Your Honor.

5 THE COURT: Okay. It's 12:30. We're going to take a
6 break. 15 -- I'm sorry. This is lunch break. It's 12:30.

7 Members of the Jury, we're going to take a lunch break
8 for one hour. We'll resume at 1:30 and continue with the
9 redirect examination of this witness, and then we'll see where
10 we are at the conclusion of the examination.

11 Do I need to repeat my instructions?

12 THE JURY: No, Your Honor.

13 THE COURT: Okay. Thank you very much. Have a good
14 lunch.

15 MS. BALDINGER: Just wait, Dr. Yue.

16 THE COURT: Just stay there.

17 (Jury exits the courtroom at 12:29 p.m.)

18 THE COURT: So out of curiosity, how long do you have
19 on redirect?

20 MS. BALDINGER: Probably 30 minutes.

21 THE COURT: And how long -- you have another witness
22 in the afternoon?

23 MR. ROTHBORT: Your Honor, our intention in the
24 afternoon was to play in some read-ins that would probably
25 go -- Mr. Cortopassi, he was trying to find out the exact time

1 for me, but I think at least an hour worth of read-ins.

2 However, the problem is the that defendants have
3 objected to some of the read-ins. And despite some meet and
4 confers, we haven't been able to resolve all the issues. We do
5 have -- if need be, we do have a couple of fact witnesses that
6 have been present, but they would only take up, like, an hour
7 at most.

8 THE COURT: All right. On the -- on the issues that
9 you have with these depositions, do I have designations and
10 counterdesignations, and did you outline the -- the objections
11 for me ahead of time?

12 MR. ROTHBORT: Your Honor, we do have a list, and I
13 can absolutely outline what --

14 THE COURT: When did you generate this list? When was
15 the list generated?

16 MR. ROTHBORT: I provided it to the defendants
17 yesterday.

18 THE COURT: Okay. Yesterday it's provided?

19 MS. BALDINGER: Your Honor --

20 MR. ROTHBORT: Your Honor, we do have all the
21 defendants' counterdesignation and their objections. We've
22 been trying to have -- there's a lot of deposition testimony,
23 and we've been trying to have meet and confers and resolve
24 them. And we did resolve many of the issues. There's just
25 some outstanding ones that we haven't been able to resolve.

1 Some of them concern Defendant Marchiafava, who we just haven't
2 had a chance to fully go through his deposition testimony.

3 THE COURT: So give me a sense of the universe of
4 these objections.

5 MR. ROTHBORT: Your Honor, there's -- I think there's
6 about -- I mean, Mr. Cook might be able to say as well because
7 I don't know if he's agreeing to waive any of the objections
8 that I gave him to the proposed read-ins, but I think a number
9 of them -- just so Your Honor understands, the read-ins that we
10 intend on offering all speak to the "failure to render medical
11 care" claim. And I do believe that many of the objections are
12 relevancy-based objections as to Officer Marchiafava's
13 testimony about what occurred and how the officers responded to
14 Mr. Ingram.

15 THE COURT: Okay. Very well.

16 MR. COOK: Your Honor, respectfully, I don't know who
17 they're playing. I mean, I can take a look at it at lunch.

18 THE COURT: Well, take a look at it. If it's
19 relevance, you know, I could resolve -- I could resolve that
20 very easily. But work through lunch and do the best you can.
21 I'm not going to delay this trial. I warned you already about
22 this. Once we get into trial, we're going to move. So try to
23 resolve them, or I'm going to resolve them for you. And I --

24 MR. WITTMAN: Your Honor, just on some of the
25 objections on Officer Gennetta, they're, for the most part,

1 compound questions and very misleading and confusing.

2 THE COURT: Okay.

3 MR. BLUMBERG: What is the Court's position whether
4 counsel is allowed to speak to her witness on cross --

5 MS. BALDINGER: I'm not speaking to my witness during
6 lunch, Your Honor.

7 THE COURT: Once the witness is on the stand and has
8 testified, no communication --

9 MS. BALDINGER: I understand.

10 THE COURT: -- with regards to the case.

11 MR. BLUMBERG: No, I get it. I get it.

12 THE COURT: With regards to the testimony of the case.

13 MR. BLUMBERG: Understood.

14 MS. BALDINGER: I wasn't planning on it.

15 MR. BLUMBERG: I wasn't -- I didn't say you were. I
16 was just asking him --

17 THE COURT: All right. Anything else? I'll see you
18 in an hour.

19 (Lunch recess taken at 12:33 p.m.)

20 (Jury enters the courtroom at 1:36 p.m.)

21 THE COURT: You may be seated.

22 MS. BALDINGER: May I proceed, Your Honor?

23 THE COURT: You may.

24 MS. BALDINGER: Thank you.

25 (REDIRECT EXAMINATION OF DR. JAMES JOSEPH YUE BY MS.

1 BALDINGER:)

2 Q. Doctor, just a quick minute of housekeeping here. You
3 were asked some questions on cross-examination by Mr. Blumberg
4 regarding what was and was not in your report. Do you have a
5 copy of your second report of January 7th, 2018?

6 A. Yes, I do. Yes, I do.

7 Q. Okay. And you were asked about whether, in that report,
8 you discussed flexion dislocation or flexion injury and
9 symptoms associated with it or characteristics of it?

10 A. Correct.

11 MR. BLUMBERG: Objection. That's not what the
12 question -- mischaracterizes it. That was not the question
13 that I asked.

14 THE COURT: Very well. It doesn't have to be the
15 specific question. It could be the same area. Overruled.
16 I'll permit it.

17 MS. BALDINGER: Thank you.

18 BY MS. BALDINGER:

19 Q. Doctor, if you could please read for yourself for a minute
20 the fourth paragraph that starts with "The premise of the
21 plaintiff's fall"?

22 A. "The premise of the plaintiff's fall resulted in a flexion
23 injury resulting in the fracture dislocation of the C4-5 facet
24 is highly implausible."

25 Q. Did you then go on to note in your report various

1 characteristics or factors as to why that would be implausible?

2 A. Yes.

3 Q. Okay. Is that the premise upon which today you expanded
4 with that particular demonstrative exhibit, the chart?

5 MR. BLUMBERG: Objection, leading.

6 THE WITNESS: Correct.

7 MS. BALDINGER: Thank you.

8 THE COURT: Sustained. Rephrase the question. It's
9 still direct examination.

10 MS. BALDINGER: Thank you, Your Honor.

11 BY MS. BALDINGER:

12 Q. Can you tell us whether the area of whether or not this is
13 a flexion distraction or injury was covered in that paragraph
14 of the report?

15 A. Yes.

16 Q. Okay. And the demonstrative that we showed the Court
17 today, was that an expansion or further elicitation of that
18 premise of that opinion?

19 MR. BLUMBERG: Objection.

20 THE COURT: State your ground.

21 MR. BLUMBERG: Leading.

22 THE COURT: Attorney Baldinger, it's still direct
23 examination.

24 MS. BALDINGER: Fine.

25 BY MS. BALDINGER:

1 Q. Can you tell us what the point of that demonstrative was
2 in connection with your report?

3 A. Yes. I wanted to differentiate between what the defense
4 theory was and what my under -- my interpretation of what
5 occurred.

6 Q. Very good. Thank you. And was that -- okay. Let me go
7 back. On cross-examination, you were asked a question about
8 whether a bilateral facet dislocation could spontaneously
9 convert into a one-sided unilateral dislocation. Do you recall
10 that?

11 A. Yes.

12 Q. Okay. Could you tell us, Dr. Yue, how often that actually
13 happens in real life, that a bilateral facet dislocation
14 spontaneously converts back into proper position and you only
15 have a unilateral dislocation?

16 A. It's very infrequent.

17 Q. Okay. And do you have an opinion within a reasonable
18 degree of medical probability with regard to whether this very
19 infrequent situation occurred with Mr. Ingram?

20 A. I do not think it occurred.

21 Q. Okay. And what is the basis for that?

22 A. The constellation of radiographic findings that are
23 evident on the CT and MRI scan.

24 MS. BALDINGER: Can we take a look at Exhibit 403-3,
25 please.

1 BY MS. BALDINGER:

2 Q. What does this diagram, this medical illustration, show
3 us?

4 A. So this shows the left-sided C4-5 jump facet, dislocated
5 facet at the C4-5 with the fractures of the facet and the
6 pedicle.

7 Q. Can we go to 409-4, please.

8 What does this show us?

9 A. This shows a perched facet on the right-hand side.

10 Q. So if I understand, he had a perched facet on one side, on
11 the right, and a dislocated facet on the left, correct?

12 A. Correct.

13 Q. Can you tell this jury what the degree was of that perched
14 facet and whether or not the degree of that perching influences
15 your opinion that it could not have converted from a
16 bilateral -- true bilateral dislocation into a unilateral
17 dislocation?

18 A. Sure. You have the left-side facet was obviously a
19 hundred percent dislocated. The right-sided facet was perched
20 probably with about 50 percent -- 30 to 50 percent continuity.

21 Q. Okay. And how does that factor into whether or not it can
22 spontaneously convert into a unilateral?

23 A. It's unlikely given the fact that this facet is more
24 located than not.

25 MS. BALDINGER: Thank you. You can take that down.

1 BY MS. BALDINGER:

2 Q. You were asked on cross-examination by Mr. Blumberg about
3 unilateral and bilateral dislocations both resulting in
4 ligament damage, correct?

5 A. Correct.

6 Q. And then you said, "But you know what's interesting is
7 there was a pattern to ligament damage with regard to a
8 torsional injury as compared to a flexion distraction,"
9 correct?

10 A. Yes.

11 Q. And Mr. Blumberg didn't ask you what that pattern was and
12 whether you saw it in the case, did he?

13 A. No.

14 Q. Can we please bring up Exhibit 409-5.

15 Do you see this diagram, sir?

16 A. Yes.

17 Q. Okay. And what does this diagram show us?

18 A. Well, it shows us the ligamentous injury in the facet
19 joint, in the -- between the vertebral bodies and between the
20 spinous process of C4 and C5.

21 Q. And these are the actual ligament damages that Mr. Ingram
22 sustained, correct?

23 A. Correct.

24 Q. And can you tell us whether the actual ligament injuries
25 Mr. Ingram sustained as shown on this illustration are

1 consistent with a torsional injury as compared to a flexion
2 distraction injury?

3 A. These would be consistent with a torsional injury. I
4 would have to see the opposite side as well to assess those
5 ligaments to determine if it was flexion distraction or not.

6 Q. Okay. This is -- but on this side, would it be
7 consistent?

8 A. Yes.

9 Q. Okay. With regard to --

10 You can take that down.

11 With regard to questions by Mr. Blumberg about
12 Mr. Ingram's fall -- I want to bring your attention there --
13 you were shown the video, and you were asked questions. You
14 said the video shows Mr. Ingram lying on his stomach, and then
15 you said he fell like a Tom Brady slide. Did I quote you
16 correctly?

17 A. Correct.

18 Q. And you weren't given an opportunity to fully explain your
19 answer. Could you explain the basis of those statements?

20 MR. BLUMBERG: I just would object, Judge, to the
21 characterization that he wasn't given an opportunity.

22 THE COURT: Fine, Your Honor. I'll withdraw that
23 portion of my question.

24 BY MS. BALDINGER:

25 Q. You were asked about Mr. Ingram's fall. You were asked

1 about your opinion that you could see that he fell on his
2 stomach and that he fell like a Tom Brady slide?

3 A. Yes.

4 Q. Could you please explain the basis for those statements
5 for the jury?

6 A. Sure. If you look at the video that was shown.

7 MS. BALDINGER: If you could tee it up, please, the
8 Eye in the Sky.

9 THE WITNESS: So in the video, he has dark shoes on,
10 light pants, and his head is dark. And you can see that the
11 shoes, they extend away from his head, not under his head. You
12 have to look at the black shoes very carefully. You'll see
13 them the entire video.

14 (Video playing.)

15 THE WITNESS: Stop it right there. Keep going. Frame
16 by frame. There.

17 So you can see that the shoes are to the far right,
18 and his head, which is the other dark object, is to the left.
19 Okay? And so that's how I know his feet did not fall
20 underneath him.

21 So in order to get the flexion distraction type of
22 injury, his feet would have had to somehow, like a bunny
23 rabbit, he would have to be jumping across the street like a
24 bunny rabbit and then land on his buttocks, and his head would
25 fall forward. That's what Dr. Batterman says, and -- yeah,

1 Dr. Batterman says that.

2 So I don't see him running across the street like a
3 bunny rabbit. He's sprinting, taking strides. And then when
4 he tries to stop, his feet go forward, which is like a Tom
5 Brady slide. Like so if Tom Brady is going for a third down,
6 fourth down, and he runs, he gets the down, and he slides down
7 so he's down, his feet go first.

8 And in this case, my assumption is he has a bad left
9 ankle, it's been fractured before, he has screws in his ankle.
10 He's going to protect that left ankle. He's going to stop with
11 his right foot. He's going to fall towards his left-hand side.
12 That's my --

13 MR. BLUMBERG: Objection.

14 THE WITNESS: -- interpretation.

15 THE COURT: State your objection.

16 MR. BLUMBERG: I've never heard this before.

17 THE COURT: Your response?

18 MS. BALDINGER: Your Honor, he opened the door. I
19 just asked him to follow up on the question, and this came.

20 THE COURT: Very well. Overruled. I'll permit it.
21 Please move on.

22 MS. BALDINGER: Thank you, Your Honor.

23 Can you please do me a favor and bring up the article
24 that we just had? What was it, 1036 at page 9. We'll start
25 with the first page.

1 BY MS. BALDINGER:

2 Q. Okay. This is an article. Do you recognize -- did you
3 see this article?

4 A. I don't -- I just see a disclaimer.

5 Q. Go to the next page where it has a title.

6 A. Yes, I've seen this before, yes.

7 Q. And the title is, "Common protective movements govern
8 unexpected falls from a standing height"?

9 MR. BLUMBERG: Objection, Judge. Beyond the scope.

10 THE COURT: Your response?

11 MS. BALDINGER: It goes directly to what was elicited
12 on cross-examination and right to page 9.

13 THE COURT: Let me see you at sidebar, Attorney
14 Baldinger.

15 (Sidebar as follows:)

16 THE COURT: So, Attorney Baldinger, if you believe
17 that they opened the door for something, you have to ask them
18 information to go through that door. I don't want you to be
19 assuming that I'm going to agree that you are permitted. He
20 already answered the question, so I don't know what damage has
21 been done. But if this was not, as he said, discussed before
22 with him, I don't think that's right. So I'm going to caution
23 you. If you think he opened the door for something, let me
24 know before --

25 MS. BALDINGER: Okay. That's fine.

1 THE COURT: -- you go through that door. And this is
2 a warning for everyone.

3 And what is your objection to --

4 MR. BLUMBERG: I didn't discuss this article at all.
5 This article never came up in my cross-examination with this
6 witness.

7 MS. BALDINGER: He questioned him about whether he
8 fell -- actually, that he hit his hands and knees and that he
9 fell on his stomach. I wanted to show him this article from
10 the defendants that showed this is exactly a common accepted
11 way of falling that's consistent with what he testified to.

12 THE COURT: Okay. Shouldn't you be asking that --
13 that of their expert, not him of, because it's outside the
14 scope of direct.

15 MS. BALDINGER: I'll move on. That's no problem.

16 THE COURT: Okay. The objection is sustained.

17 MS. BALDINGER: Thank you, Your Honor.

18 (Sidebar concluded.)

19 THE COURT: Take it down.

20 MS. BALDINGER: Thank you.

21 BY MS. BALDINGER:

22 Q. You were asked to confirm -- or you were asked on
23 cross-examination about the full thickness muscle injury?

24 A. Yes.

25 Q. And you indicated that it was unusual, correct?

1 A. Yes.

2 Q. You also were asked about whether there was any sign of
3 injury under the subcutaneous tissue in Mr. Ingram's neck,
4 correct?

5 A. Correct.

6 Q. What is subcutaneous tissue?

7 A. Subcutaneous tissue is mainly a fatty layer under the
8 skin.

9 Q. And what significance, if any, is there, Doctor, you -- to
10 the fact that you did not see any injury in the subcutaneous
11 layer of Mr. Ingram's neck?

12 A. The subcutaneous injury would be dependent upon the
13 thickness of the fat. A thinner person would have much less
14 fat. Therefore, you would see very little potential trauma
15 because there's nothing to traumatize.

16 Secondly, the -- you can press on muscle, the different
17 layers, but the only layer that's going to be really, harshly
18 affected is going to be the muscle that's up against something
19 very hard, a bone. Okay?

20 And so in this case, the skin, the fat, and the very
21 superficial muscle are not up against a bone. They're up
22 against more muscle. Okay? So it's not until the deeper
23 layers, which are against the bone, right, are pressed on, and
24 those are the layers that will be injured. Okay? They have
25 to -- muscles -- like I said, the Slinky, it's very

1 stretchable, pliable. But it has its limitations, especially
2 up against something very hard.

3 Q. And did you see that in Mr. -- in your review of
4 Mr. Ingram's studies?

5 A. Yes. There -- yes, we did.

6 Q. Can you tell the jury where and how.

7 A. On the MRI scan, axial view, I think we had one that has a
8 picture of it with the red around it that's pretty
9 depictive(Sic) of it.

10 Q. If we could take a look at 402-2, is that what you're
11 asking for, or 406-4? Is that what you're looking for?

12 A. That one and the other one that has the other cut, the --

13 MS. BALDINGER: 402-2, please. Or just maybe 406-2.

14 I am sorry.

15 BY MS. BALDINGER:

16 Q. Is that what you were looking for?

17 A. Yes.

18 Q. Okay. Can you explain, please.

19 A. So you can see that the muscle that's red --

20 MS. BALDINGER: Your Honor, may he approach?

21 THE COURT: He may.

22 MS. BALDINGER: Thank you.

23 Here you go. Just stand over here so you're not
24 blocking the jurors.

25 THE WITNESS: Yeah. This red muscle, which was -- you

1 saw white on the PowerPoint that I showed this morning -- is
2 the same muscle. It's just highlighted to show the damage.
3 And so this is red. That's the sub- -- that's the muscle
4 that's up against this bone. This other muscle is not against
5 anything hard. It's up against more soft muscle. And this
6 very thin layer is the fat.

7 So Mr. Ingram is in exceptional shape. He doesn't
8 have a subcutaneous layer to really speak of because it's a
9 very thin layer. Okay? And the rest of the muscle is smaller,
10 and it's up against the soft, but this muscle is up against the
11 bone.

12 See this bone right there? And anything -- any time
13 muscle is pressed against something hard, it's going to have a
14 limitation. And that's why that muscle is damaged and that's
15 why the tissue above it is not.

16 BY MS. BALDINGER:

17 Q. And what was the cause of that muscle injury, as you see
18 it?

19 A. Pressure downwards with a knee. And, again, I measured
20 this to be about 6 centimeters in length, which is about the
21 same size of a knee. Patella in a human being is about 4 to
22 6 centimeters. It measures exactly the same size.

23 MS. BALDINGER: Can we take a look at 406-4, please.

24 BY MS. BALDINGER:

25 Q. Can you show us that in this drawing.

1 A. Yes. So this distance -- if you measure this distance,
2 the width of the axial view, especially. This is a
3 longitudinal view. The axial view is better.

4 Q. Up and down?

5 A. If you have the other view that has the measurement is
6 better.

7 MS. BALDINGER: Okay. The other view, if you could go
8 back, please.

9 THE WITNESS: This distance -- so the kneecap --
10 imagine a knee right there is the same width as a kneecap,
11 okay, so that's why you're seeing that size. It's a very,
12 very -- common sense.

13 MS. BALDINGER: Thank you, Doctor.

14 BY MS. BALDINGER:

15 Q. You were asked about the lack of abrasions, bruising, or
16 contusions; in other words, the absence of external marks as
17 being noted. There were no such indications of those being
18 present in the EMS report and in the emergency room, correct?

19 A. Correct.

20 Q. Okay. Can you tell us, does the lack of bruising or an
21 abrasion or a contusion to the right side or the back of
22 Mr. Ingram's neck have any significance to your opinions?

23 A. It doesn't change them because, again, that tissue is not
24 going to be affected. It's not up against anything hard. And
25 so unless someone took a knife or something sharp, you know, a

1 studded-something, you're not going to see anything back there
2 because the knee is soft. I mean, it's got a padding to it.
3 There's pants. It's not a sharp point. It's more of a broader
4 surface. And so that broader surface won't leave significant
5 marks of bruising because he's -- it's not going to -- it's not
6 up against anything hard.

7 Q. You were asked on cross-examination a question that
8 stated -- and I believe I have it right -- could you tell
9 whether the movement back and forth, after Mr. Ingram was set
10 up, made his injuries worse?

11 Do you remember that question?

12 A. Yes.

13 MR. BLUMBERG: Objection, Judge. That was not the
14 question.

15 THE COURT: Sustained.

16 Rephrase your question.

17 BY MS. BALDINGER:

18 Q. Do you remember being asked questions by Mr. Blumberg
19 regarding Mr. Ingram's being moved back and forth?

20 A. Yes.

21 Q. And remember you said you couldn't answer that question
22 "Yes" or "No"?

23 A. Correct.

24 Q. Could you tell us why you couldn't answer the question
25 "Yes" or "No."

1 A. Because that would have needed a live MRI during the
2 motion to see if there was actual, you know, tissue damage
3 within the spinal cord itself. And obviously, we're
4 not -- there's no live MRI that's on this North 7th Street that
5 the patient -- that the plaintiff is in. And so you, sort of,
6 need that information, because he's asking me about damage to
7 the tissue.

8 Q. Do you have an opinion, within a reasonable degree of
9 medical probability, as to what impact the moving him back and
10 forth and having him fall on his face had on his injuries?

11 MR. BLUMBERG: Objection.

12 THE COURT: You don't have to answer. There's an
13 objection.

14 State your grounds.

15 MR. BLUMBERG: It's been asked, and it's -- during
16 cross-examination. There was no answer to that question, and I
17 don't think he can change his answer.

18 THE COURT: Well --

19 MS. BALDINGER: It's not --

20 THE COURT: Excuse me.

21 Your response?

22 MS. BALDINGER: It's not. It's a clarification
23 because it was misleading the way the question was asked.

24 MR. BLUMBERG: Objection, Judge.

25 THE COURT: Very well. But you know that on redirect,

1 the witness can explain and clarify what was raised on cross.

2 So overruled. I'll permit it.

3 BY MS. BALDINGER:

4 Q. Can you answer the question, Dr. Yue.

5 What is your opinion as to the impact -- the motion of
6 sitting Mr. Ingram up, having him move back and forth, fall on
7 his face, and pick him back up -- have on his neck injury as
8 sustained originally on the ground?

9 A. Correct. So any movement of an unstable spine will create
10 further alteration in the physiology of the spinal cord and all
11 the surrounding tissues. It will decrease the likelihood of
12 recovery. The more you contuse the spinal cord, the more you
13 stretch it, the more you rotate it, the less likely that you're
14 going to get a recovery. So that's an additional traumatic
15 event, and that can take -- could I see it acutely? Yes. But
16 I may not see it acutely. I may see it a day or so later or a
17 week later. The effects take time. And so -- but it's the
18 motion, the additional motion, the additional contusion,
19 bruising of the tissue that leads to the decrease in possible,
20 potential recovery and gainful use of his extremities.

21 MS. BALDINGER: Thank you, Dr. Yue.

22 Nothing further.

23 THE COURT: May I see you at sidebar?

24 (Sidebar as follows:)

25 THE COURT: Mr. Blumberg, you didn't have an

1 opportunity to cross-examine on -- I think it was Exhibit
2 404-3, the testimony about the infrequency -- when he was
3 testifying about his opinion regarding the infrequency
4 situation with Mr. Ingram. And I think there was a discussion
5 about Exhibits 404.

6 And I -- also, I don't think the issue of -- I think
7 you objected, and I overruled the objection, but I wanted to
8 offer you an opportunity to cross or recross on the issue of
9 the fact that you said you never heard him before say that
10 the -- explain how he fell and the fact that I think he had an
11 injury to the left side.

12 MR. BLUMBERG: Okay.

13 THE COURT: Do you wish to cross-examine on those two
14 things?

15 MR. BLUMBERG: Yes, Your Honor.

16 THE COURT: I want to give him an opportunity. It's
17 only fair.

18 MS. BALDINGER: No problem.

19 THE COURT: You may.

20 MS. BALDINGER: Thank you.

21 (Sidebar concluded.)

22 THE COURT: Mr. Blumberg.

23 MR. BLUMBERG: Thank you.

24 (RECROSS EXAMINATION OF DR. JAMES JOSEPH YUE BY MR. BLUMBERG:)

25 Q. Dr. Yue, you mentioned on the redirect examination about

1 the fact that he was running and that he had a prior fracture
2 of his -- was it his ankle or --

3 A. Left ankle.

4 Q. Left ankle, with respect to protecting that left ankle,
5 et cetera. Do you remember all that testimony?

6 A. Yes, I do.

7 Q. Is it your testimony that you could tell that that's what
8 he was doing in that video that you observed?

9 A. I could tell that his --

10 Q. Can you answer that "yes" or "no," first.

11 A. Can I tell the difference between the right foot and the
12 left foot, no.

13 Q. Okay. So is it a fair statement that you can't support
14 the fact that he was favoring one versus the other, as you
15 testified on redirect examination, based on that video
16 evidence, correct?

17 A. Correct.

18 Q. And that's all the evidence you have at this point to
19 indicate how he was running across the street, fair?

20 A. Yes.

21 MR. BLUMBERG: I have nothing further.

22 THE COURT: Okay. Thank you for your testimony.
23 Nobody else has any -- you don't have?

24 MR. TAMBUSI: No, Your Honor.

25 MR. WITTMAN: No, Your Honor.

1 THE COURT: You're excused.

2 (Witness excused.)

3 THE COURT: Okay. Call your next witness.

4 MR. ROTHBORT: Your Honor, at this point the plaintiff
5 would like to play a number of deposition read-ins. We have
6 agreed upon what's going to be played with the defendants.
7 There will be both video clips, and there's also a supplemental
8 addition that I guess I will be reading to the jury in a
9 question and answer session.

10 THE COURT: Okay. So these are depositions, audio and
11 visual?

12 MR. ROTHBORT: Yes.

13 THE COURT: The jury is going to be able to see them?

14 MR. ROTHBORT: Yes, they're going to be on the videos.
15 If Your Honor would permit us a brief minute or two,
16 Mr. Cortopassi just needs to do a sound check, just to make
17 sure that all the jurors can hear it, because some of the audio
18 clips are varying degrees of decibel.

19 THE COURT: Do you want me to discuss how to consider
20 the video deposition testimony with the jury?

21 MR. ROTHBORT: Yes, I think that would be a fair
22 instruction, as long as the defendants don't have any
23 objection.

24 THE COURT: Well, I could briefly give them an
25 instruction on how to consider video and deposition testimony.

1 So, Members of the Jury, you're going to be listening
2 to the deposition testimony -- it's also on video -- that will
3 be presented to you. And if you remember in my preliminary
4 instructions, I gave you specific instructions on how to
5 determine and the factors to consider the credibility of the
6 witnesses. And you are to apply the same standards in
7 assessing credibility to this type of testimony.

8 Just because it's submitted to you by way of a
9 deposition or a video deposition is not entitled to more weight
10 or less weight. You apply the same legal standards in
11 determining the extent to which you accept the testimony of the
12 witnesses.

13 With that, we will proceed to listen to the deposition
14 testimony of various witnesses, and the lawyers will identify
15 who they are.

16 MR. ROTHBORT: Sure. Thank you, Your Honor. I'll
17 just ask for a moment of the Court's indulgence. We just have
18 to do a brief sound test.

19 (Pause.)

20 THE COURT: Could you give me a sense of how long this
21 deposition testimony is going to be?

22 MR. ROTHBORT: I expect it to be about an hour or so.

23 THE COURT: Okay.

24 MR. ROTHBORT: Your Honor, we're going play the first
25 clip, which is going to be from Defendant Merck's deposition

1 testimony, lines 37, 11, through 38, 5. And just since this is
2 the first clip, if any of the jurors are having trouble
3 hearing, just please let me know, so I can raise the volume.

4 THE COURT: You may proceed.

5 (Video playing.)

6 MR. ROTHBORT: Thank you. Can you please read in from
7 Defendant Merck's deposition page 38, line 16 through page 39,
8 line 5.

9 (Video playing.)

10 MR. ROTHBORT: Your Honor, is there audio coming from
11 your monitor?

12 THE COURT: I'm not sure.

13 MR. ROTHBORT: Sorry. We heard an echo back here, and
14 that's why I was asking.

15 THE COURT: You believe it's me?

16 THE TECHNICIAN: I believe it might be a monitor, Your
17 Honor. The computer screen it might be playing audio or the
18 microphones are picking up.

19 THE COURT: Maybe it's picking up.

20 MR. ROTHBORT: Thank you.

21 THE COURT: Try now.

22 MR. ROTHBORT: We'll try the next one. From Defendant
23 Marchiafava's deposition, page 60, line 16 through 22.

24 (Video playing.)

25 MR. ROTHBORT: And the next clip is from Defendant

1 Gennetta's, page 196, line 19 through page 197, line 25.

2 (Video playing.)

3 MR. ROTHBORT: Next we're going to play from Defendant
4 Gennetta's deposition page 198, line 5 through page 199,
5 line 10.

6 (Video playing.)

7 MR. ROTHBORT: And next from Defendant Gennetta's
8 deposition page 284, lines 9 through 13.

9 (Video playing.)

10 MR. ROTHBORT: And Defendant Gennetta page 284,
11 lines 21 through page 286, line 1.

12 (Video playing.)

13 MR. ROTHBORT: Thank you. Now please play from
14 Defendant Gennetta, page 286, line 15 through 287, line 20.

15 (Video playing.)

16 MR. ROTHBORT: Defendant Gennetta, page 288, lines 12
17 through 22.

18 (Video playing.)

19 MR. ROTHBORT: Next I'd like to play from Defendant
20 Merck's deposition page 40, line 7 through page 43, line 8.

21 (Video playing.)

22 THE COURT: We have a problem here. We think it's the
23 monitor.

24 (A discussion held off the record.)

25 THE COURT: Thank you.

1 MR. ROTHBORT: Next please play from Defendant Merck,
2 page 42, line 22, to page 43, line 8.

3 (Video playing.)

4 THE COURT: We have an echo here.

5 MR. ROTHBORT: Your Honor, what we're going to do is
6 mute the TVs, and Mr. Cortopassi has speakers, he's going to
7 just play it from those.

8 THE COURT: Okay. I appreciate that.

9 MR. ROTHBORT: All right. We'll try and see if this
10 works.

11 James, could you please play from Defendant Merck's
12 deposition page 43, line 11 through page 44, line 25.

13 (Video playing.)

14 MR. ROTHBORT: Let's move on to Defendant Marchiafava.
15 I'm going to ask that we play three separate clips, they're all
16 in sequential order: Page 60, line 23 through page 61, line 9;
17 and then page 61, line 10 through 16; and page 61, line 17
18 through 25. So please play those three clips in a row.

19 (Video playing.)

20 MR. ROTHBORT: Please play from Defendant
21 Marchiafava's deposition page 62, line 19 through page 63,
22 line 14.

23 (Video playing.)

24 MR. ROTHBORT: Next I'm going to ask to play a series
25 of clips from Defendant Marchiafava's deposition beginning at

1 page 66, line 1 through 13; page 66, line 14 through 21;
2 page 66, lines 22 through 67(Sic); page 67, line 4; page 67,
3 line 5 through 8.

4 (A discussion held off the record.)

5 MR. ROTHBORT: Through 19.

6 (Video playing.)

7 MR. ROTHBORT: Please also play page 67, line 20
8 through page 68, line 3 of Defendant Marchiafava's deposition.

9 (Video playing.)

10 MR. TAMBUSI: Judge, excuse me. It's just a small
11 clarification. I'm sure that Officer Marchiafava would
12 appreciate the promotion, but he's not a lieutenant, he's an
13 officer.

14 THE COURT: Very well.

15 MR. ROTHBORT: Next we're going to play two clips
16 sequentially from Defendant Marchiafava: Page 68, line 17
17 through page 69, line 2; and page 69, line 3 through page
18 68 -- excuse me -- page 69, line 3 through 8; and then page 69,
19 line 9 through 19.

20 (Video playing.)

21 MR. ROTHBORT: Your Honor, if I could just have a
22 moment of the Court's indulgence, I have to go confer with
23 Mr. Cook.

24 (A discussion held off the record.)

25 MR. ROTHBORT: Your Honor, do you mind if I just pull

1 this down for a second?

2 Next we're going to be reading deposition testimony
3 from Chief Nelson Weist. We have some video clips, but there's
4 also some portions just from the deposition that I'm going the
5 read to the jury since those clips aren't currently available.

6 THE COURT: Okay. Go ahead.

7 MR. ROTHBORT: So:

8 Question: So Chief Weist, where are you
9 currently -- sorry, let me read the lines. Page 61, line 10
10 through page 13, line 20.

11 Question: So Chief Weist, where are you currently
12 employed?

13 Answer: My primary employment is with the South
14 Jersey Transportation Authority. I am the fire chief. My
15 primary discipline is the Atlantic City International Airport,
16 which encompasses the tech center, 177th Fighter Wing and the
17 campus. It's a 5,500 acre campus.

18 Question: Specifically what is your position, your
19 title?

20 Answer: I am the fire chief.

21 Question: And how long have you been the fire chief
22 for South Jersey Transportation Authority located at the
23 Atlantic City International Airport?

24 Answer: Since June of 2016.

25 Question: What are some of your -- generally, you can

1 give me an overview of your roles and responsibilities in that
2 primary position.

3 Answer: I am responsible for the day-to-day
4 operations of a career department managing all of the
5 personnel, managing the budgets and responsible for the
6 different disciplines that we are responsible to, aircraft
7 rescue and fire fighting, structural fire fighting, basic life
8 support, and everything else that falls under our umbrella.

9 Question: Okay. And prior to assuming this position
10 as fire chief for South Jersey Transportation at the Atlantic
11 City Airport in June of 2016, what was your previous primary
12 employment?

13 Answer: I was a shift commander for the airport fire
14 department, the South Jersey Transportation Authority fire
15 department. I was one of the assistant chiefs.

16 Question: And how long did you hold that position?

17 Answer: Roughly four years.

18 Question: So that would have been 2012 to 2016,
19 approximately?

20 Answer: It's pretty close.

21 Question: And what were some of your
22 responsibilities -- what were some of your roles and
23 responsibilities, generally, as assistant chief and shift
24 commander for the South Jersey transportation association?

25 Answer: I was responsible for managing the shifts,

1 both of my shifts. I was responsible for the personnel,
2 oversight with regards to any responses, obviously the incident
3 commander on any responses and ensuring that -- I was the
4 planning and preparedness chief for the campus, and I was also
5 responsible for the BLS training for the department personnel.

6 Question: BLS training means basic life support,
7 correct?

8 Answer: Yes, ma'am.

9 Question: And prior to holding the position from 2012
10 to 2016, what was your previous primary employment?

11 Answer: I was a fire captain for the South Jersey
12 Transportation Authority at the Atlantic City International
13 Airport, I believe 2009, somewhere in 2009 until my promotion
14 to assistant chief.

15 I'll now read from page 15, line 24 through page 16,
16 line 5.

17 Question: Now, can you tell me what certifications or
18 licenses that you hold pertinent to emergency medical services?

19 Answer: Sure. I am an emergency medical technician
20 with the state of New Jersey. I'm also a certified emergency
21 medical technician instructor with the state of New Jersey.

22 Next, page 23, line 6, through page 24, line 23.

23 Question: And are you aware of Camden County College
24 also having a police academy?

25 Answer: Yes, ma'am.

1 Question: When did you start to provide any type of
2 educational training services through Camden County Police
3 Academy?

4 Answer: My best recollection would be somewhere
5 around 2012, 2013.

6 Question: And what process did you go through to
7 become qualified or hired by Camden County Police Academy to
8 provide instructional services?

9 Answer: We had to provide our professional
10 certifications to become certified as PTC instructors -- police
11 training commission instructors -- strictly in our discipline,
12 emergency medical field.

13 Question: What training or instruction did you go
14 through to become a police training commission instructor?

15 Answer: Our professional certifications afforded us
16 the opportunity, we went through the paperwork process, and
17 then we received some training from the academy staff on how
18 the police academy worked.

19 Question: Do you hold a certificate of any kind or a
20 license of any kind recognizing you as a police training
21 commission instructor?

22 Answer: Yes, ma'am.

23 Question: What is it called? Does it have a title?

24 Answer: Off the top of my head, I don't remember.

25 Question: What would you refer to it as?

1 Answer: My PTC instructor.

2 Question: Do you maintain copies of your certificates
3 and licenses, sir?

4 Answer: Yes, ma'am.

5 Question: So if I made a request of you to please
6 produce a copy of your PTC instructor's certificate, you would
7 be able to do that?

8 Answer: Yes, ma'am.

9 Question: When did you obtain your PTC instructor's
10 certificate?

11 Answer: I don't remember.

12 And now I would ask, James, if you would please play
13 Chief Nelson Weist, page 24, line 24, through page 25, line 12.

14 (Video playing.)

15 MR. ROTHBORT: Please play page 52, line 16, through
16 page 53, line 3.

17 (Video playing.)

18 MR. ROTHBORT: Please play page 58, line 5, through
19 page 58, line 18.

20 (Video playing.)

21 MR. ROTHBORT: Please play page 60, line 14
22 through 25.

23 (Video playing.)

24 MR. ROTHBORT: I'll now read from page 61, line 1
25 through 11, from Chief Weist's deposition.

1 Question: If an officer is acting as a first
2 responder in assessing an individual, if they are not sure
3 whether the individual's presenting with a medical condition or
4 a trauma-related condition, the advisable and recommended
5 course of action to take, pursuant to their first responder
6 training, is to treat it as a trauma, correct?

7 Answer: It's based on the circumstances. It's based
8 on the general impressions. I can't give a clear answer on
9 that because each patient presents with a deferent set of
10 implications.

11 Please play page 61, lines 12 through 17, and then
12 page 61, lines 20, through page 62, 7.

13 (A discussion held off the record.)

14 MR. ROTHBORT: Sorry. Those are of Chief Weist.

15 (Video playing.)

16 MR. ROTHBORT: And now I will read from page 62,
17 lines 18 through 24, from Mr. Weist's deposition.

18 Question: If the patient is reporting a loss of
19 feeling in their arms and their legs and their feet, are your
20 officers trained that those are potential symptoms associated
21 with paralysis?

22 Answer: Again, it depends on the circumstances of
23 the -- of how the patient got to where they're at.

24 Please play from Chief Weist's deposition page 62,
25 lines 25, through page 66, line 19.

1 (Video playing.)

2 MR. ROTHBORT: Please play Chief Weist's deposition
3 page 69, line 19, through page 71, line 1.

4 (Video playing.)

5 MR. ROTHBORT: Please play from Chief Weist's
6 deposition page 80, lines 12 through 24.

7 (Video playing.)

8 MR. ROTHBORT: Please play from Defendant Merck's
9 deposition page 216, line 2, through page -- through line 25.

10 (Video playing.)

11 MR. ROTHBORT: Please play from Defendant Merck's
12 deposition page 246, line 14, through page 250, line 15.

13 (Video playing.)

14 MR. ROTHBORT: Please play from Defendant
15 Marchiafava's deposition page 282, line 4 through 11, followed
16 by lines 12 through 16 of page 282.

17 (Video playing.)

18 MR. ROTHBORT: Please play from Defendant Marchiafava
19 page 282, line 17, through page 283, line 5.

20 (Video playing.)

21 MR. ROTHBORT: Please play from Defendant
22 Marchiafava's deposition page 283, line 20, through page 284,
23 line 3.

24 THE COURT: And then we'll recess. Play this, and
25 then we'll recess.

1 MR. ROTHBORT: Your Honor, there's just another set of
2 clips in the same series, if -- I want to make sure for
3 continuity purposes.

4 THE COURT: Okay. So this is a good time to break for
5 a 15-minute break?

6 MR. ROTHBORT: That's fine.

7 THE COURT: Members of the Jury, this will be our
8 afternoon break. 15 minutes. I don't need to repeat the
9 instructions, right?

10 THE JURY: No, Your Honor.

11 THE COURT: All right. Have a good break.

12 THE COURTROOM DEPUTY: All rise.

13

14 (Jury exits the courtroom at 2:59 p.m.)

15 THE COURT: See you in 15 minutes.

16 How much more do we have?

17 MR. ROTHBORT: Your Honor, I think with some of the
18 delays that I may have underestimated about, I think maybe
19 about a half an hour.

20 THE COURT: All right.

21 MS. BALDINGER: Then I have -- that takes us to about
22 quarter to 4:00.

23 THE COURT: Okay. And then what do we have?

24 MS. BALDINGER: I have another witness or two, and
25 then we'll be done for the day.

1 THE COURT: We're going to be taking testimony until
2 5:00, right?

3 MS. BALDINGER: That's what I said, another witness or
4 two. I'm hoping to stay as close to 5:00, Your Honor. We're
5 going as fast as we can.

6 THE COURT: Okay.

7 MS. BALDINGER: Can I just address what we're going to
8 do for tomorrow afternoon with the bed coming and the delivery
9 so that I can plan appropriately?

10 THE COURT: Yes.

11 MS. BALDINGER: So the bed is coming I'm -- at 2:30,
12 the delivery people.

13 THE COURT: Where is the bed going to be coming at
14 2:30?

15 MS. BALDINGER: Yeah, I know that they'll be here at
16 3:00, but I've asked them to come at 2:30 to make sure we don't
17 run into a time deadline. So with the jury, I'm thinking maybe
18 we'd finish around 2:30, quarter after 2:00. I have -- I need
19 the time to move the courtroom. We need to move the equipment.
20 We need to set it up.

21 THE COURT: Any reason why that can't be done after we
22 take --

23 MS. BALDINGER: Yes, because of office -- because of
24 security, they only work certain hours we can get into the
25 building, and the bed delivery people don't work late

1 at -- they don't work after 5:00. Your Honor, we've been down
2 this road. I mean -- and I apologize. I recognize this is an
3 inconvenience to the Court. It's interrupting the Court's
4 schedule. But I also know that when other people here in the
5 courtroom, they need time, we've allotted it. Okay. I know
6 Mr. Tambussi needed a day for oral argument, no problem.

7 I need two hours, Your Honor, or a couple of hours to
8 get this bed set up and give Mr. Ingram his day in court.
9 We're doing our best to keep things moving. We have a full day
10 next week. My hands are tied. We've been making these
11 arrangements for weeks. We've made sure everybody is
12 vaccinated, everything is ready to go, downstairs is ready,
13 security knows they have to be out of the building at a certain
14 time.

15 THE COURT: All right. We'll meet in 15 minutes.
16 I'll talk to you later about this.

17 MS. BALDINGER: Thank you, Your Honor.

18 (Brief recess at 3:01 p.m.)

19 THE COURT: Any reason we cannot take testimony until
20 3:00 tomorrow and then you have the balance of the day?

21 MS. BALDINGER: Your Honor, I really prefer to end at
22 2:30, and I'm asking for your indulgence. I have everything
23 set up. We have witnesses to cover us to 2:30. I'm not trying
24 to shortcircuit this trial by any means. We have been filling
25 every minute. We appreciate the court's time, Your Honor's

1 time, everyone that's here.

2 I'm not trying to cut it short. I have just made all
3 of these arrangements because I understand security has to
4 close the courthouse and our men have to be out by 5:00. I
5 don't want any problem. I'm asking for a 30-minute indulgence,
6 Your Honor.

7 THE COURT: Very well.

8 THE COURTROOM DEPUTY: Are you ready?

9 THE COURT: Yeah, bring the jury in.

10 MS. BALDINGER: If it was --

11 THE COURT: I'll talk to you -- I'll talk to you
12 later.

13 THE COURTROOM DEPUTY: All rise.

14 (Jury enters at 3:17 p.m.)

15 THE COURT: You may be seated.

16 MR. ROTHBORT: All right. We'll continue with the
17 deposition read-ins. Continue with Defendant Marchiafava,
18 page 283, line 20, through page 284, line 3. And then actually
19 there will be additional clips continuing through page 284,
20 line 14.

21 (Video playing.)

22 MR. ROTHBORT: Please play Defendant Gennetta,
23 page 200, lines 9 through 18.

24 (Video playing.)

25 MR. ROTHBORT: Please play Defendant Gennetta,